U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: SRC-99-009-52874 Office: Texas Service Center Date: JAN 11 2000

Public Copy

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner claims to be engaged in the fabrication of marine vessels. It seeks to employ the beneficiary temporarily in the United States in a specialized knowledge capacity as a boilermaker. The director determined that the petitioner had not established that the beneficiary possesses specialized knowledge with respect to the company, or its processes or procedures, that sufficient physical premises to house the new office had been secured, that it would be a qualifying organization within one year, or that the beneficiary had one continuous year of full-time employment in a capacity requiring specialized knowledge with the foreign entity.

On appeal, counsel submits a statement in rebuttal to the director's findings.

Counsel had indicated that additional evidence would be submitted in support of the appeal on or before January 27, 1999. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

Title 8, Code of Federal Regulations, Part 214.2(l)(3)(vi) states:

> (vi) If the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:
>
> (A) Sufficient physical premises to house the new office have been secured,
>
> (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section, and
>
> (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The record reflects that the U.S. company was established in 1998, and the beneficiary began working for the foreign company in 1997. The petitioner states that the U.S. company is a wholly-owned subsidiary of [redacted] located in [redacted]. The petitioner seeks to employ the beneficiary for a one-year period at an hourly salary of $16.84.

At issue in this proceeding is whether the beneficiary will be employed in a specialized knowledge capacity.

Title 8, Code of Federal Regulations, part 214.2(l)(1)(ii)(D) provides that:

> Specialized knowledge means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In his decision, the director noted that although the petitioner claims to be in the business of fabrication of marine vessels, the evidence in the record indicates that it is actually in the business of recruiting and providing labor to other business organizations, particularly in engineering and construction fields requiring skilled labor. The director further noted that the specialized knowledge that the petitioner claims the beneficiary possesses does not appear to pertain to the recruitment and provision of skilled labor, but the skills required by the petitioner's client organizations.

On appeal, counsel states in part that:

> ...the proposed labor force to be transferred will be directly employed by the petitioning company in fabricating a part (double hull) of a marine vessel.
>
> The petitioner has shown that specialized knowledge is, in fact, possess [sic] by the beneficiary and is different from that generally found in a particular industry in that the beneficiary possesses specialized knowledge of the petitioning organization's services, research, equipment, techniques, and their management and its application in international markets. Furthermore, the beneficiary possesses an advance [sic] level of knowledge or expertise in the organization's processes and procedures...

> ...the examining officer demanded "*proprietary knowledge*" in order to qualify for the L-1B visa. This is an erroneous request.
>
> ...the examining officer correctly stated that knowledge which is widely held or related to common practices or techniques and which is readily available in the U.S. job market is not specialized for purposes of the L-1B. However,...the examining officer failed to properly review the duties of the beneficiary and note that the skills and duties are not readily available and their knowledge is not widely held nor is it related to common practices and techniques.
>
> ... the examining officer [has] misread the submitted General Counsel's Opinion and inserted verbiage into the opinion which is not present.
>
> ...the examining officer demanded in the denial that the beneficiary must have management and decision making responsibilities in order to qualify for the L-1B visa. This is erroneous.

Counsel submits a general counsel's opinion from the Service dated May 11, 1992, and states that it is "a reverse mirror image" of the present case. However, the cited opinion involved a Chinese corporation that purchased and sought to dismantle a steel mill in the U.S. that it would later reconstruct in China. The petitioner has not persuasively demonstrated that the present case which involves the recruiting of skilled laborers to work in a U.S. shipyard warrants comparison with the scenario described in the general counsel's opinion.

The record contains a document entitled "American Admiralty Bureau Research Services Report of Panel Examination" dated November 3, 1998, in which a convening examiner states in part that:

> The panel of American Admiralty Bureau Examiners could not find evidence of the necessary specialized knowledge elsewhere in the American shipbuilding labor force. Nor could we locate training forces for the domestic development of such expertise, which is the product of long and intensive apprenticeship. Such apprenticeship presupposes the ready availability of such work, which is not the case in the United States presently. Moreover, our corporate experience in preparing our publication AMERICAN ADMIRALTY BUREAU'S GUIDE TO AMERICAN MARITIME TRAINING PROGRAM...informs us that formal apprenticeship is rare and little practiced or understood in the United States...

The issue in this case is not the specialized knowledge or skills that the beneficiary brings to the proffered position, but rather that he possesses knowledge and skills of the petitioning organization's unique processes that are truly proprietary in nature, and privy only to the petitioning organization. In this case, the petitioning organization is a recruitment business, not a shipyard facility, and the apprenticeship program that the beneficiary is claimed to have participated in was not with the petitioning entity. The record does not reflect that the beneficiary possesses an advanced level of knowledge of the processes and procedures of the petitioning entity. For this reason, the petition may not be approved.

Another issue in this proceeding is whether sufficient physical premises to house the new office have been secured.

In his decision, the director noted that at the time of the filing of the petition, the petitioner submitted a lease agreement for a telephone answering service in [redacted] The director further noted that subsequent to the filing date of the petition, the petitioner submitted a lease agreement for office space with a maximum occupancy of two persons in [redacted]. The director concluded that the petitioner had not procured sufficient [redacted] premises at the [redacted] location at the time of the filing of the petition.

On appeal, counsel states in part that:

> The petitioner has sufficient physical premises in Houston and in New Orleans to satisfy the statute and regulation requirements...

Title 8 C.F.R. 103.2(b)(12) states that an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. The record indicates that the U.S. entity was incorporated on August 11, 1998, and the present petition was filed on October 6, 1998. The record further indicates that at the time of the filing of the petition, the petitioner submitted a service agreement dated September 23, 1998, between the petitioner and OmniOffices, Inc., for telephone and secretarial services, and another agreement dated September 14, 1998, with [redacted] of Metairie, LA, to provide telephone services for the U.S. entity. The petitioner subsequently submitted leases for office space in [redacted] and [redacted] The lease for office space in [redacted] that was signed on September 24, 1998, contains no details such as floor plans, diagrams, or dimensions. In addition, the lease for the Houston office space was signed on November 5, 1998, subsequent to the filing date of the petition. As such, the petitioner has not persuasively demonstrated that at the time of the filing of the

petition, sufficient physical premises to house the new office had been secured. For this additional reason, the petition may not be approved.

Another issue in this proceeding is whether the U.S. entity will be a qualifying organization within one year.

8 C.F.R. 214.2(l)(1)(ii)(G) states:

> Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
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> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Title 8 C.F.R. 214.2(l)(1)(ii)(H) states:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In his decision, the director noted that the U.S. entity is merely an office established for the purpose of supplying shipyards with skilled labor. The director further noted that the petitioner had not established that it would be "doing business" as defined within the regulation within one year, and therefore would not be considered a "qualifying organization" as defined within the regulation.

On appeal, counsel states in part that:

> ...the examining officer [has] made unfounded presumptions and speculations in claiming that the petitioning company is in the *"business of recruiting and providing labor to other business organizations"* when, in fact, the proposed labor force to be transferred will be

> directly employed by the petitioning company in fabricating a part (double hull) of a marine vessel. ...the examining officer erroneously claimed that the petitioner will not be doing business within one year because *"it will support shipyards with labor"*. This is an egregious speculation and error.

The record indicates that the U.S. entity has been subcontracted to provide skilled labor, not to fabricate/manufacture marine vessels. A separate company, Avondale Shipyard Division, will fabricate the marine vessel in its shipyard facilities, utilizing the employees recruited by and employed by the petitioner. The petitioner has not established that it is engaged in the business of fabricating marine vessels as indicated in Part 5 of the I-129 petition. As such, the petitioner has not persuasively established that the U.S. entity will be a qualifying organization within one year. For this additional reason, the petition may not be approved.

Another issue in this proceeding is whether the beneficiary has one continuous year of full-time employment in a capacity requiring specialized knowledge with the foreign entity.

In his decision, the director noted that the contracts submitted by the petitioner were of limited duration and did not indicate when the specified work was completed. The director further noted that the payslips indicated that the beneficiary worked for the foreign entity for 156 hours for the year as of November 8, 1997, and for 189 hours for the year as of September 25, 1998.

On appeal, counsel states in part that:

> The petitioner has shown that the beneficiary has worked for more than one year with the parent company in a specialized knowledge capacity (see copies of both letters submitted by the parent company and the explicit job duties detailed in the support documents).
>
> ...the examining officer over-relied on an employment contract and pay slips which were submitted as part of a letter from the parent company and noted that the contract and the pay slips are merely secondary evidence to support the primary evidence which is the parent company's letter that states and verifies the one year employment of the beneficiary.

The record contains the following:

> A letter dated September 11, 1998, signed by the foreign entity's operation director, stating that the beneficiary has been employed by the foreign entity for at least the last twelve months;

Contracts between the foreign entity, A.B.C. Recruitment (Pty), Ltd., and the beneficiary signed on August 13, 1997 and March 6, 1998 for an undetermined length of time;

Two pay slips dated November 8, 1997 and September 25, 1998, reflecting approximately 43 days of work.

The evidence submitted by the petitioner does not persuasively establish that the beneficiary has one continuous year of full-time employment in a capacity requiring specialized knowledge with the foreign entity. For this additional reason, the petition may not be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.